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DEPARTMENT OF EDUCATION

34 CFR Chapter IV

Final Waivers and Extensions of Project Periods; American Indian Vocational Rehabilitation Services (AIVRS) Program [Catalog of Federal Domestic Assistance (CFDA) Number: 84.250C]

AGENCY: Rehabilitation Services Administration, Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Final waivers and extensions of project periods.

SUMMARY: The Secretary waives the regulations that generally limit project periods to 60 months and that restrict project period extensions involving the obligation of additional Federal funds. As a result, for the 60-month projects initially funded in fiscal year (FY) 2007 under the AIVRS program, the Secretary is extending the project periods until September 30, 2013.

DATES: This notice of final waivers and extensions of the project periods is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: August Martin, U.S. Department of Education, 400 Maryland Avenue, SW., room

5049, Potomac Center Plaza (PCP), Washington, DC 20202-2800. Telephone: (202) 245-7410.

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll-free, at 1-800-877-8339.

SUPPLEMENTARY INFORMATION:

On July 25, 2012, the Department published a notice in the Federal Register (77 FR 43560) inviting comments on the Department's proposal to make certain AIVRS grants effective for more than 60 months under the authority of Section 121(b)(3) of the Rehabilitation Act of 1973, as amended (the Act). The Secretary proposed to waive the requirements of 34 CFR 75.250, which generally limit project periods to 60 months, and of 34 CFR 75.261(c)(2), which restrict project period extensions involving the obligation of additional Federal funds. In that notice, the Secretary also proposed to extend the project period for the eight AIVRS grantees from October 1, 2012, through September 30, 2013. The proposed waivers and extensions would enable the eight AIVRS grantees to request, and continue to receive, Federal funds beyond the 60-month limitation set by 34 CFR 75.250.

There are no substantive differences between the notice of proposed waivers and extensions and this notice of final waivers and extensions.

Public Comment

In the July 25, 2012, notice for the AIVRS program, the Secretary invited comments on the effect these proposed waivers and extensions may have on the AIVRS program and on potential applicants for grant awards under any new AIVRS notice inviting applications, should there be one. We received comments from 13 commenters, 10 of which supported the Department's proposal to waive regulations at 34 CFR 75.250 and 34 CFR 75.261(c)(2) restricting project period extensions past 60 months and restricting extensions that require additional Federal funds and to extend the project period for 8 AIVRS grantees beyond September 30, 2012, so that they could continue to receive Federal funds from October 1, 2012, through September 30, 2013.

Generally, we do not address technical and other minor changes. In addition, we do not address general comments that raise concerns not directly related to the proposed waivers and extensions.

Analysis of Comments and Changes:

Comment: Three commenters raised a concern that a decision not to run a competition in FY 2012 would preclude tribes

that are interested in responding to a notice inviting applications from having the opportunity to apply for a grant and referred to the human capital and fiscal resources that were expended in anticipation of a new competition.

Discussion: The Department has proposed to extend the current AIVRS grantees in response to a recommendation made by the U.S. Government Accountability Office (GAO) in a report titled, "Indian Issues: Federal Funding for Non-Federally Recognized Tribes," released on May 9, 2012, for the Department to review its interpretation of "reservation" used in determining eligibility under the AIVRS program.¹ GAO raised concerns about the eligibility of State-recognized tribes that are not located on State reservations but rather are located on a defined and contiguous area of land where there is a concentration of tribal members and in which the tribe is providing structured activities and services as identified in their grant application. In order to respond to GAO's recommendation, we believe it is advisable to take time to review carefully the eligibility requirements for this program and to consider the Department's options. Therefore, in order to maintain the status quo while the

¹ The GAO report is available at www.gao.gov/products/GAO-12-348.

Department undergoes this review, we have decided to maintain funding to existing AVIRS grantees and not to hold a new competition in FY 2012.

Human capital and fiscal resources that were expended in anticipation of a potential competition in FY 2012 have not been wasted. Application requirements for a FY 2013 competition are not likely to differ substantially from those in previous competitions. As such, application materials developed in anticipation of a potential competition in FY 2012 should be able to be used in the FY 2013 competition.

Changes: None.

Comment: Two commenters expressed concern about the potential effect of the proposed action on the next grant competition. One commenter asked whether the action to extend funding for current programs will decrease the number of grants available to be awarded when a competition is held. The other commenter asked whether this proposal to suspend the current practice of annual grant competitions will place more of our AIVRS programs in competition with each other.

Discussion: The AIVRS program is funded through a set-aside of the funds appropriated for the Vocational Rehabilitation (VR) State Grants program. Assuming a set-

aside of at least 1.2 percent of the VR appropriation in FY 2013, the Department's action to extend these grants would not decrease the total number of grants awarded under the AIVRS program. At the end of FY 2013, 32 grants, including the 8 grants that would be extended under this notice, will conclude their current projects. Pending the availability of funds, the Department anticipates holding a grant competition in FY 2013 that would fund a minimum of 32 grants with project periods that would begin in FY 2014. The Department would have awarded the same total number of new grants over the two year period if it had conducted separate competitions in fiscal years 2012 and 2013. Thus, this action will not decrease the number of grants awarded nor should it result in increased competition among AIVRS programs.

Changes: None.

Comment: One commenter asked if tribes will be provided reasonable and adequate time and notice to fully and properly plan for and complete grant submissions.

Discussion: We anticipate that the FY 2013 competition will be announced in time to provide adequate notice and time for applicants to prepare and submit applications.

Changes: None.

Comment: One commenter asked whether applicants would have adequate and reasonable time to prepare a grant submission this year, if these proposed waivers and extensions do not move forward.

Discussion: The AIVRS program will not conduct a grant competition this year because we believe it is advisable to take time to carefully review the eligibility requirements for this program, in response to GAO's recommendation, before holding a new competition. The Department will, instead, waive the regulations that generally limit project periods to 60 months and restrict project period extensions involving the obligation of additional Federal funds. The Department plans to review requests for continuation awards from the eight grantees based on the 2007 notice inviting applications (NIA) and, where appropriate, extend the currently-funded projects through September 30, 2013.

Changes: None.

Background

The eight AIVRS grantees, selected based on the 2007 AIVRS NIA published on March 14, 2007 (72 FR 11851), provide vocational rehabilitation services to American Indians with disabilities who reside on or near Federal or State reservations as authorized by section 121 of the

Rehabilitation Act of 1973, as amended (the Act) (29 U.S.C. 741) .

The project period for the eight AIVRS grantees was scheduled to end September 30, 2012. However, section 121(b)(3) of the Act provides that the Department has the authority to make an AIVRS grant effective for more than 60 months, pursuant to prescribed regulations. Therefore, for these eight AIVRS grantees, the Secretary waives the requirements of 34 CFR 75.250 and 34 CFR 75.261(c)(2) which limit project periods to 60 months and restrict project period extensions that involve the obligation of additional Federal funds. The Secretary also extends the current project period for the eight AIVRS grantees funded in FY 2007 until September 30, 2013. Finally, the Department will not announce a new AIVRS competition or make new awards in FY 2012.

This action allows the eight AIVRS grantees to request continuation funding in FY 2012. Decisions regarding annual continuation awards will be based on the program narratives, budgets, budget narratives, and program performance reports submitted by these eight AIVRS grantees and on the requirements of 34 CFR 75.253. Any activities to be carried out during the year of continuation awards would have to be consistent with, or be a logical extension

of, the scope, goals, and objectives of each grantee's application as approved following the 2007 AIVRS competition. The 2007 AIVRS NIA will continue to govern their projects during the extension year. These current AIVRS grantees may request continuation awards in FY 2012 for project periods through FY 2013.

Waiver of Delayed Effective Date: The Administrative Procedure Act requires that a substantive rule must be published at least 30 days before its effective date, except as otherwise provided for good cause (5 U.S.C. 553(d)(3)). We have not made any substantive changes to the proposal. The Secretary has therefore determined to waive the delayed effective date to ensure timely continuation grants to the entities affected.

Regulatory Flexibility Act Certification

The Secretary certifies that this final extension of the project period and waiver will not have a significant economic impact on a substantial number of small entities. The only entities that will be affected are the current grantees and any other potential applicants.

Paperwork Reduction Act of 1995

The final waivers and extensions of project periods do not contain any information collection requirements.

Intergovernmental Review

This program is not subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (e.g., braille, large print, audiotape, or compact disc) on request to the contact person listed under For Further Information Contact.

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Dated: September 20, 2012

Melody Musgrove,
Director of Special Education Programs,
delegated the authority to perform the
functions and duties of the Assistant
Secretary for Special Education and
Rehabilitative Services.

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